IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 3297 of 2007(P)

PETITIONER:

C.J. MERCY SUBASH,
SECRETARY (UNDER ORDER OF SUSPENSION)
ANAKALLU KSHEEROLPADAKA SAHAKARANA SANGHAM,
UPPADA, MALAPPURAM.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

1. ANAKKALLU KSHEEROLPADAKA SAHAKARANA SANGHAM, UPPADA, MALAPPURAM, REPRESENTED BY ITS SECRETARY.

2. DISCIPLINARY SUB COMMITTEE, REPRESENTED BY ITS CHAIRMAN, ANAKKALLU KSHEEROLPADAKA SAHAKARANA SANGHAM, UPPADA.

3. THE DPUTY DIRECTOR, DAIRY DEVELOPMENT DEPARTMENT, OFFICE OF THE DEPUTY DIRECTOR OF DIARY DEVELOPMENT, MALAPPURAM.

4. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, AGRICULTURE AND DAIRY DEVELOPMENT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

5. MATHAI. C.V., PRESIDENT, ANAKKALLU KSHEEROLPADAKA SAHAKARANA SANGHAM, UPPADA, MALAPPURAM.

BY GOVERNMENT PLEADER SMT.LATHA THANKAPPAN
ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 23/06/1997 APPROVING THE APPOINTMENT OF THE PETITIONER.

EXT.P2: COPY OF THE COMMUNICATION DATED 10/03/2005 ISSUED BY THE SECRETARY OF THE SOCIETY.

EXT.P3: COPY OF THE ORDER DATED 04/06/2005 ISSUED BY THE DEPUTY DIRECTOR.

EXT.P4: COPY OF THE APPEAL PREFERRED BY THE PETITIONER UNDER SECTION 83(1) (J) OF KCS ACT.

EXT.P5: COPY OF THE GOVERNMENT ORDER DATED 19/01/2006.

EXT.P6: COPY OF THE JUDGMENT IN W.P.(C) No.6287/2006 OF THIS HONOURABLE COURT.

EXT.P7: COPY OF THE LETTER DATED 19/12/2006.

EXT.P7(a):COPY OF THE MEMO OF CHARGES.

EXT.P8: COPY OF THE REPORT OF THE DEPUTY DIRECTOR.

EXT.P9: COPY OF THE PROCEEDINGS OF THE DEPUTY DIRECTOR NO.C-3293/1997 DATED 10/06/1999.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.3297 OF 2007

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Dated this the 16th day of March,2007

JUDGMENT

The petitioner is the secretary of the first respondent society. In 1998 the petitioner was suspended pending disciplinary proceedings which was the subject matter of proceedings before the authorities under the Co-operative Societies Act whose decision was not favourable to the bank and therefore, the bank filed W.P. (C). No.6287/2006. Ext.P6 is the judgment in that case. In that judgment while upholding the orders of the Government, Ext.P5 quashing the orders passed by the society, the learned Judge who heard the writ petition made it clear that the society can proceed against the petitioner as per law, if the allegations against her still subsist. The judgment was passed on 07.11.2006. Thereafter, Ext.P7 suspension order and Ext.P7(a) charge memo were issued to the petitioner initiating disciplinary proceedings. The same are under challenge in this writ petition.

2. The petitioner's contention is that these charges are the very same charges which have been found to be unsustainable in the earlier proceedings, culminating in Ext.P6 judgment and therefore, society cannot rely upon the liberty granted by Ext.P6 judgment to proceed against the petitioner and cannot now revive those charges and conduct a fresh disciplinary enquiry. On the

other hand, the learned counsel for the first respondent society would submit that the earlier orders were quashed purely on technical grounds and in fact not only the earlier allegations are still subsisting which have been included in Ext.P7 (a) but other charges have also been included in Ext.P7(a) and therefore there is no merit in the contention of the petitioner in this regard.

3. I am not inclined to go into the rival contentions of the parties at this juncture, in so far as an employer the society does have the right to subject its employee to disciplinary proceedings if circumstances warrant such an action. However, in view of the fact that these proceedings have originally started in 1998, it is only just and fair that the first respondent society completes the disciplinary proceedings against the petitioner expeditiously. There would be a direction to the first respondent society to do so. If the petitioner has applied for maternity leave and has intimated the society that she would not be in a position to participate in the enquiry proceedings during the period of maternity, the society shall take into account this fact while continuing proceedings pursuant Ext.P7(a).

The learned counsel for the petitioner submits that there is absolutely no reason for suspending the petitioner and that in fact the suspension is against Exts.P5 and P6 orders. He has therefore, filed an application before the third respondent under Rule 176 of the Kerala Co-operative Societies Rules. She seeks a direction to

the third respondent to dispose of the same expeditiously. In such circumstances, I direct the third respondent to dispose of the said petition as expeditiously as possible after affording an opportunity being heard to the petitioner as well as the first respondent society. However, I make it clear that I have not expressed any opinion whatsoever in respect of merits of the rival contentions of the parties either in respect of Exts.P7 and P7(a) or the claim of the petitioner against her suspension which is the subject matter of the petition under Section.176, including the maintainability of the petition under Section.176.

S.SIRI JAGAN,JUEDGE

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